

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION FINAL ACTION SUMMARY

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
KAREN D. HULSE) Account Number SR EH 53-003954
Petitioner) Case ID 458251
Mission Viejo, Orange County

Type of Liability: Responsible person liability
Liability period: 07/01/06 – 12/31/07

<u>Item</u>	<u>Disputed Amount</u>
Responsible person liability	\$49,213 ¹
Tax as determined and proposed to be redetermined	\$50,236.00
Interest through 01/31/14	23,710.31
Late payment penalties	<u>5,023.60</u>
Total tax, interest, and penalty	\$78,969.91
Payments (by another individual)	<u>- 6,046.32</u>
Balance Due	<u>\$72,923.59</u>
Monthly interest beginning 02/01/14	<u>\$ 220.95</u>

This matter was scheduled for Board hearing in October 2010, but was deferred at the request of the Appeals Division in order to issue an SD&R. The matter was rescheduled for Board hearing in April 2013, but petitioner did not respond to the Notice of Hearing. Thus, the matter was scheduled for decision on the Consent calendar. However, the matter was deferred for further review, as requested by Member Runner. As explained under “Other Matters,” further investigation did not alter our recommendations. This matter is now scheduled for decision on the Adjudicatory calendar.

UNRESOLVED ISSUES

Issue 1: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of SDG Precast, Inc. pursuant to Revenue and Taxation Code section 6829. We conclude petitioner is personally liable.

¹ The disputed amount represents the tax and penalties of \$55,259.60 (\$50,236 + \$5023.60) less the payments of \$6,046.32, which were all made by Robert Earl Hulse.

1 SDG Precast, Inc. (Precast) (SR EH 100-480714) was a retailer of decorative concrete products
2 from November 2004 through December 2007. At the time its business terminated, Precast had unpaid
3 liabilities related to sales and use tax returns filed with no remittance. The Sales and Use Tax
4 Department (Department) concluded that petitioner was personally responsible for Precast's sales and
5 use tax compliance pursuant to section 6829.²

6 Petitioner disputes two of the four conditions for imposing personal liability pursuant to section
7 6829, that she was a person responsible for Precast's sales and use tax compliance and that she
8 willfully failed to pay or to cause to be paid taxes due from Precast. Petitioner contends that her ex-
9 husband should be the only person held personally responsible for this liability, arguing that she was
10 only responsible as a bookkeeper for the business and that she did not willfully fail to pay the tax due
11 because she acted at the direction of the corporate president who then was her husband. Petitioner
12 stated that her ex-husband wanted Precast to pay only the liabilities necessary to keep the business
13 operating. In addition to disputing that she willfully failed to pay the taxes due, petitioner contends
14 that relief should be granted on the basis that she was an innocent spouse.

15 Petitioner was a corporate officer for Precast, and the evidence shows that she performed duties
16 typical of a responsible corporate officer, including those related to sales and use tax compliance. In
17 response to a questionnaire from the Department, petitioner stated that she was responsible for
18 Precast's accounts payable and for determining which liabilities needed to be paid. She was authorized
19 to sign checks, and did so, and she was responsible for sales tax reporting. Further, petitioner
20 communicated with the Board on issues pertaining to sales and use tax matters. At the appeals
21 conference, petitioner confirmed that she was the corporate secretary with these responsibilities and
22 duties. Thus, the evidence shows that petitioner was a responsible person under section 6829.

23 With respect to willfulness, personal liability can be imposed on a responsible person under
24 section 6829 only if that person willfully failed to pay or to cause to be paid taxes due from the
25 corporation, which means that the failure was the result of an intentional, conscious, and voluntary
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27 ² The Department also issued a Notice of Determination to Robert Earl Hulse pursuant to section 6829. Mr. Hulse has not
28 filed an appeal, and that determination has become final. Mr. Hulse has been making regular payments, ranging from \$5.00
to \$346.60, with regular payments of \$100.00 twice per month since February 2012. .

1 course of action (even if without a bad purpose or evil motive). A person is regarded as having
2 willfully failed to pay taxes, or to cause them to be paid, where he or she had knowledge that the taxes
3 were not being paid and had the authority to pay taxes or cause them to be paid, but failed to do so. It
4 is undisputed that petitioner knew the taxes were due and were not being paid.

5 Willfulness also requires that the responsible person must have been able to pay, or cause to be
6 paid, the taxes when due. Regarding authority, we note that petitioner stated in a Department
7 questionnaire that she was authorized to sign corporate checks, she was responsible for accounts
8 payable and sales tax reporting, she determined what bills needed to be paid, and the instruction from
9 Precast's president was to pay only what was necessary to keep the business operating. Thus, we find
10 petitioner had the authority to pay the taxes or cause them to be paid. Regarding whether Precast had
11 sufficient funds to pay the taxes due, petitioner has admitted that the sales tax reimbursement collected
12 from customers was deposited into a business bank account and was used to pay various business
13 expenses. During the liability period, petitioner signed checks to other creditors totaling more than
14 \$1 million, but paid nothing to the Board. We find this evidence clearly shows that petitioner had the
15 authority to pay the tax liability, and had funds available to do so, but elected to pay other creditors.
16 We note that petitioner's recent claims that Precast's president exercised sole authority to decide which
17 liabilities would be paid are not entirely consistent with her original statements regarding her
18 responsibilities and duties (in response to the Department's questionnaire). Regardless, to the extent
19 Mr. Hulse exercised independent authority deciding which bills to pay, there is no contemporaneous
20 documentation establishing or even suggesting that petitioner was not in agreement with Mr. Hulse's
21 decisions or that she ever attempted to pay Precast's tax liability and was overruled. Accordingly, we
22 find petitioner willfully failed to pay the tax liability owed by Precast or to cause it to be paid. In
23 summary, we conclude that all conditions have been satisfied for imposing personal liability on
24 petitioner under section 6829 for the outstanding tax liabilities of Precast.

25 **Issue 2:** Whether petitioner should be granted relief from the liability at issue on the basis that
26 she was an innocent spouse. We find that relief is not warranted.

27 Petitioner contends she was acting at the direction of her husband, Precast's president, who
28 instructed her to pay only the liabilities necessary to keep the business operating. On that basis, she

1 claims that relief should be granted to her as an innocent spouse.

2 In the D&R, we concluded that, since petitioner knew Precast was not paying the sales tax
3 liability, innocent spouse relief is not applicable. We also concluded that there is no basis for equitable
4 relief. After the D&R was issued, petitioner provided evidence that, in the marital settlement
5 agreement completed when the couple divorced, Mr. Robert Hulse assumed 100 percent of the
6 community property debt owed to the Board. However, that document does not alter our conclusion.

7 We have found, and petitioner does not dispute, that she knew of the unpaid liability. Thus, the
8 circumstances here do not satisfy one of the requirements necessary to grant innocent spouse relief,
9 that she must have had no knowledge of the liability. (Cal. Code Regs., tit. 18, § 1705.1.subd. (a).)
10 Regarding the question of whether equitable relief is warranted, we have found (above) that petitioner
11 was a corporate officer responsible for Precast's sales and use tax compliance and that she willfully
12 used tax reimbursement collected from customers to pay creditors other than the Board and is thus
13 personally liable as a responsible person pursuant to section 6829. That finding is wholly inconsistent
14 with a finding of eligibility for equitable innocent spouse relief. Therefore, we decline to recommend
15 equitable relief of the liabilities to petitioner as an innocent spouse.

16 OTHER MATTERS

17 Penalties of \$5,023.60 have been applied to the liability of Precast for late payment of returns.
18 Although we explained to petitioner that she could request relief of those penalties on behalf of
19 Precast, she has declined to do so. At the appeals conference and in post-conference correspondence,
20 petitioner indicated that she did not believe a request for relief would alter the outcome of this matter.

21 In April 2013, Member Runner requested that this case be deferred from the Consent calendar
22 for further review in light of a different case from 2004, which Member Runner found had
23 circumstances similar to those in this case. The Department compared the circumstances of the two
24 cases and found that there was no evidence showing that the person in the case from 2004 had either
25 the knowledge that taxes were not paid or the authority to pay the taxes, and thus, there was
26 insufficient evidence to hold that person liable for the corporation's unpaid taxes as a responsible
27 person. On the other hand, in this case, there is substantial evidence that Ms. Hulse was a responsible
28 person. Specifically, she was the corporate secretary, and she stated on her response to the

1 Department's questionnaire that she was a responsible person. There is also much more evidence of
2 willfulness in this case than in the case from 2004. Specifically, the liabilities here are self-assessed
3 liabilities, and petitioner signed two of the sales and use tax returns. Further, there is no dispute that
4 petitioner knew of the unpaid sales tax liabilities. Although Ms. Hulse's ex-husband has provided an
5 email stating that he made all decisions about which liabilities to pay, there is no evidence that
6 petitioner was prevented from paying sales taxes. Accordingly, we find that the ex-husband's email
7 does not overcome the significant evidence that petitioner was a person responsible for Precast's sales
8 and use tax liabilities and that she willfully failed to pay the sales tax due. Therefore, we find that the
9 case at hand is readily distinguished from the case from 2004, and our recommendation remains that
10 the petition be denied.

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Summary prepared by Lisa Burke, Business Taxes Specialist III